EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HARRIET BELL, Individually and on behalf of all similarly situated persons,	)	
Plaintiff,	)	CIVIL ACTION NO. 1:06-CV-1993-CC
vs.	)	
CALLAWAY PARTNERS, LLC, and HURON CONSULTING GROUP, INC.	)	
Defendants.	)	

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PART ONE: Introduction

- This case arises out of Callaway's HealthSouth project, where HealthSouth had been accused of perpetrating a multi-billion dollar accounting fraud by grossly misstating its finances
- Plaintiffs worked on the HealthSouth Project for Callaway
- They helped reconstruct HealthSouth's books and restate its financials
- Plaintiffs are highly-educated accountants and Certified Public Accountants who, during their employment with Callaway, often made in excess of $100,000 per year

Introduction

- U.S. Department of Labor ("DOL") audited Callaway in 2005, including it pay practices at HealthSouth
- The DOL reviewed Callaway's pay records for a two year period – from November 28, 2003 through November 27, 2005 – and interviewed employees
- The DOL concluded some employees on the HealthSouth project had inadvertently not been paid for some holidays in 2004, and that a few employees were entitled to compensation for performing non-exempt work

Introduction

- With the DOL's supervision and approval, Callaway issued checks to 184 employees for a total of approximately $165,000
- During the DOL's investigation, the DOL never questioned the issues before the Court today - Callaway's bonus plan or other pay practices
- Upon receiving checks, some employees decided they would rather sue Callaway than accept a check that was part of a DOL supervised settlement

Introduction

- August 24, 2006 – This case was filed raising pay practices the DOL never questioned
- June 16, 2007 – Conditional certification granted. We now have 120 Plaintiffs
- "Although the violation of the Fair Labor Standards Act alleged by Plaintiffs is questionable as a matter of law, the merits of the claim can and will be revisited at a later stage of this litigation." (Hr'g Tr., May 23, 2007, at 83)
- Discovery for more than 2 years, including Callaway producing payroll records for 7,871 weeks worked

Introduction

- Out of 7,871 weeks worked by Plaintiffs, they only identified 53 weeks (0.7% of the time) in which they allege Callaway deducted from their bonuses for partial days worked, and they identified only 24 weeks (0.3% of the time) in which they did not receive their full salaries or the correct pro rata amount. (Plaintiffs' Opposition Brief p. 8)
- To put this in context, we are arguing today about what happened to Plaintiffs less than 1% of the time
- The 53 bonus deductions resulted in a total of approximately $10,421.50 not being paid

PART TWO: Legal Framework for the FLSA

- The FLSA requires the payment of overtime when employees work more than forty hours in a week. 29 U.S.C. § 207(a)(1).
- However, the FLSA exempts from such overtime coverage, "any employee employed in a bona fide executive, administrative or professional capacity." 29 U.S.C. § 213(a)(1).
- The FLSA does not define the exemptions; rather, the Act gives the U.S. Secretary of Labor "broad authority" to define and limit the scope of exemptions in promulgated regulations. *Auer v. Robbins*, 519 U.S. 452, 456 (1997).

Secretary of Labor's Chosen Approach

- Under the Secretary of Labor's chosen approach, employees are "exempt" from the overtime requirement if (1) they are paid a "predetermined" weekly salary of at least $455 ("salary basis test") and (2) perform the types of job duties set forth in the regulations for the exemptions. *See* 29 C.F.R. § 541.602; §§ 541.100 through 541.300.

- As the Supreme Court has explained, "Because the salary-basis test is a creature of the Secretary [of Labor]'s own regulations, his interpretation of it is, under [Supreme Court] jurisprudence, controlling unless 'plainly erroneous or inconsistent with the regulation.'" *Auer v. Robbins*, 519 U.S. 452, 461 (1997).

Requirements of the Salary Basis Test

- Under the Secretary of Labor's chosen approach, the salary basis test is satisfied where "the employee regularly receives each pay period on a weekly, or less frequent basis, *a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in quality or quantity of work performed.*" 29 C.F.R. § 541.602(a).

- The predetermined amount must equal at least $455 per week.

Deductions from Salary

- Employers are permitted to deduct from an exempt employee's salary in certain circumstances. 29 C.F.R. § 541.602(b)

- Deductions are permitted for items such as full day absences for personal reasons, full day absences for sickness made in accordance with the employer's plan, and initial/terminal weeks of employment, among others. 29 C.F.R. § 541.602(b)

- "An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis." 29 C.F.R. § 541.603(a)

Permissive "Additional Compensation"

- In contrast to the salary requirement, an employer is permitted – but not required – to also pay an exempt employee what the DOL calls "additional compensation." 29 C.F.R. § 541.604(a)

- "Such additional compensation *may be paid on any basis* (e.g., flat sum, *bonus payment, straight-time hourly amount*, time and one-half or any other basis), and may include paid time off." 29 C.F.R. § 541.604(a)

Deductions from "Additional Compensation"

- Unlike an employee's weekly salary, nothing in the Secretary of Labor's regulations prohibits an employer from making deductions from an exempt employee's additional compensation.

- And, unlike an employee's weekly salary, nothing in the Secretary of Labor's regulations state that an employer can "lose" the exemption by deducting from an employee's additional compensation.

Deductions from "Additional Compensation"

- In fact, two DOL Opinion Letters hold that the "prohibition against improper deductions from the guaranteed salary under 29 C.F.R. § 541.602(b) *does not extend to such additional compensation provided to exempt employees*." (Exhibits C and D to Defendants' Motion for Summary Judgment on Bonus Plan)

- Bottom line, the manner in which additional compensation is calculated ("on any basis"), and any deductions from it, are irrelevant to whether employees are exempt.

Deductions from "Additional Compensation"

- The Fifth Circuit Court of Appeals has followed the DOL Regulations and Opinion Letters. *Lovelady v. Allsup's Convenience Stores, Inc.*, 304 Fed. Appx. 301 (5th Cir. 2008).

- *Lovelady* held: "Deductions or reductions from bonus payments do not affect an employee's status as an exempt employee so long as the requisite minimum $455 salary is paid." 304 Fed. Appx. at 304